FILED

961447 MAR 12 1997

OFFICE OF THE CLERK

No. 96-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,
Petitioner,

v.

BE&K CONSTRUCTION COMPANY, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Alabama

---

PETITION FOR A WRIT OF CERTIORARI

JOHN T. DE CARLO
DANIEL J. HALL
DE CARLO, CONNOR & SELVO
500 South Virgil Avenue
Los Angeles, CA 90020

ANDREW D. ROTH
DAVID M. SILBERMAN
LAURENCE GOLD *
BREDHOFF & KAISER, P.L.L.C.
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036
(202) 833-9340

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

37 pp

QUESTIONS PRESENTED

International Shoe Co. v. Washington, 326 U.S. 310 (1945), and its progeny, have recognized as consistent with the Due Process Clause, two heads of *in personam* jurisdiction over legal entities whose "personality is a fiction" and whose "presence" in the forum State can be "manifested only by activities carried on in [the entity's] behalf."

The Due Process Clause "*specific* jurisdiction" law is well settled. But the state appellate courts and the federal courts of appeals are divided as to when the Due Process Clause permits the exercise of "*general* jurisdiction"—*viz.*, *in personam* jurisdiction over a corporation or unincorporated association in a suit *not* arising out of or related to the entity's contacts with the forum.

The Supreme Court of Alabama, for its part, holds that in any suit by a resident plaintiff, Alabama can, consistent with the Due Process Clause, assert general jurisdiction over any corporation and any unincorporated association "conduct[ing] business here," *viz.*, any legal entity that engages in some activity within the State on an ongoing, as opposed to sporadic, basis.

The questions presented are:

1. Does the Due Process Clause permit a State to assert general jurisdiction—and thus to adjudicate claims against the defendant not arising out of or related to the defendant's in-State activity—over any corporation and any unincorporated association that engages in some ongoing activity within the State and without regard to the nature, volume, or extent of the entity's in-State activity?

2. If not, does the Due Process Clause require, for the constitutional assertion by a State of general jurisdiction (i) that (as the cases discussed *infra* at pp. 16-17, hold) the defendant engage in substantial activity within the State in absolute terms; (ii) that

(as the cases discussed *infra* at pp. 18-19, 20-21, hold) a substantial proportion of the defendant's overall activities take place within the State; (iii) that (as the cases discussed *infra* at pp. 22-23, hold) the defendant's general business activities in managing and directing the enterprise as a whole take place within the State; or (iv) that (as the case discussed *infra* at pp. 23-25, holds) the defendant's activities within the State meet a basic "minimum contacts" test and the assertion of general jurisdiction satisfies a five-factor "reasonableness" test?

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties listed in the caption—the United Brotherhood of Carpenters and Joiners of America, AFL-CIO and BE&K Construction Company—the following were parties in the courts below:

United Paperworkers International Union, AFL-CIO;

Minnesota State Building and Construction Trades Council;

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 728;

International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 783;

International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 8;

William P. Lukawski, Jr.;

Rudolph H. Clay;

Marc J. Furman; and

William R. Peterson.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
ADDITIONAL PARTIES	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	29

TABLE OF AUTHORITIES

CASES — Page

Administrators of Tulane Educ. Fund. v. Cooley, 462 So. 2d 696 (Miss. 1984), *cert. denied*, 474 U.S. 820 (1985) 16
Amoco Egypt Oil Co. v. Leonis Nav. Co., 1 F.3d 848 (9th Cir. 1993) 22, 23
Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987) 9, 25
Atlanta Auto Auction, Inc. v. G & G Sales, Inc., 512 So. 2d 1334 (Ala. 1987) 14
Bearry v. Beech Aircraft Corp., 818 F.2d 370 (5th Cir. 1987) 22
Braband v. Beech Aircraft Corp., 382 N.E.2d 252 (Ill. 1978), *cert. denied*, 442 U.S. 928 (1979) 16
Budget Rent-A-Car v. District Court, 835 P.2d 17 (Nev. 1992) 17
Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 9, 25
Burnham v. Superior Court, 495 U.S. 604 (1990) 12
Calder v. Jones, 465 U.S. 783 (1984) 5, 9
Cornelison v. Chaney, 545 P.2d 264 (Cal. 1976) 17
Crose v. Volkswagenwerk Antiengesellschaft, 558 P.2d 764 (Wash. 1977) 15
Dalton v. R & W Marine, Inc., 897 F.2d 1359 (5th Cir. 1990) 22
Derman v. Wilair Servs., 590 A.2d 317 (Pa. Super.), *review denied*, 600 A.2d 537 (Pa. 1991) 18
Donatelli v. National Hockey League, 893 F.2d 459 (1st Cir. 1990) 25
Ex parte British Steel Corp., 426 So. 2d 409 (Ala. 1982) 14
Ex parte I.M.C., Inc., 485 So. 2d 724 (Ala. 1986) 14
Ex parte Newco Mfg. Co., 481 So. 2d 867 (Ala. 1985) 14, 15
Ferrell v. Prairie Int'l Trucks, Inc., No. 86-949, 1997 WL 33953 (Okla. Jan. 28, 1997) 15
Glover v. Western Air Lines, Inc., 745 P.2d 1365 (Alaska 1987) 15

TABLE OF AUTHORITIES—Continued

	Page
Goodyear Tire & Rubber Co. v. Ruby, 540 A.2d 482 (Md. 1988)	19
Hartley v. American Contract Bridge League, 812 P.2d 109 (Wash. Ct. App.), *review denied*, 820 P.2d 511 (Wash. 1991)	15
Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408 (1984)	*passim*
Hughes v. A.H. Robins Co., 490 A.2d 1140 (D.C. 1985)	18
International Shoe Co. v. Washington, 326 U.S. 310 (1945)	*passim*
Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984)	9
Kuenzle v. HTM Sport-Und Freizeitgerate, 102 F.3d 453 (10th Cir. 1996)	23
Laufer v. Ostrow, 434 N.E.2d 692 (N.Y. 1982)	16
Lewron Television, Inc. v. International Alliance of Theatrical Stage Employees & Moving Machine Operators, 378 A.2d 728 (Md. Ct. Spec. App. 1977)	19
Madara v. Hall, 916 F.2d 1510 (11th Cir. 1990)	21
Markby v. St. Anthony Hosp. Sys., 647 P.2d 1068 (Wyo. 1982)	17
Maunder v. DeHavilland Aircraft, 466 N.E.2d 217 (Ill. 1984)	16
McGee v. International Life Ins. Co., 355 U.S. 220 (1957)	9
Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560 (2d Cir.), *cert. denied*, 117 S. Ct. 508 (1996)	23, 24
Michigan Nat'l Bank v. Quality Dinette, Inc., 888 F.2d 462 (6th Cir. 1989)	16
Munley v. District Court, 761 P.2d 414 (Nev. 1988)	17
National Indus. Sand Ass'n v. Gibson, 897 S.W.2d 769 (Tex. 1995)	17
Nichols v. G.D. Searle & Co., 991 F.2d 1195 (4th Cir. 1993)	20, 21, 27
Pennoyer v. Neff, 85 U.S. 714 (1878)	7

TABLE OF AUTHORITIES—Continued

	Page
Perkins v. Benguet Mining Co., 342 U.S. 437 (1952)	*passim*
Price & Sons v. District Court, 831 P.2d 600 (Nev. 1992)	17
Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n, 819 F.2d 434 (3d Cir. 1987)	20
Tauza v. Susquehanna Coal Co., 115 N.E.2d 915 (N.Y. 1917)	16
Thomason v. Chemical Bank, 661 A.2d 595 (Conn. 1995)	18
Ultra Scientific, Inc. v. Yanusas, No. 95-249, 1997 WL 21187 (R.I. Jan. 21, 1997)	19
Vons Co. v. Seabest Foods, Inc., 926 P.2d 1085 (Cal. 1996)	17
Wilson v. Belin, 20 F.3d 644 (5th Cir.), *cert. denied*, 115 S. Ct. 322 (1994)	22
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)	9
STATUTES	
28 U.S.C. § 1257	2
OTHER AUTHORITIES	
Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121 (1966)	5, 22
Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S. Ct. Rev. 77	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,
Petitioner,

v.

BE&K CONSTRUCTION COMPANY, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Alabama

---

PETITION FOR A WRIT OF CERTIORARI

The United Brotherhood of Carpenters and Joiners of America, AFL-CIO, petitions this Court to issue a writ of certiorari to the Supreme Court of Alabama to enable this Court to review the judgment and decision in *Ex parte United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, S. Ct. of Ala. No. 1915080.

OPINIONS BELOW

The decision of the Supreme Court of Alabama has not yet been reported, and is reproduced as Appendix A in the separately-bound appendix to this *certiorari* petition (Pet. App. 1a-21a). The decision of the Circuit Court of Jefferson County, Alabama is unreported, and is reproduced as Appendix B hereto (Pet. App. 22a).

JURISDICTION

The Supreme Court of Alabama issued its decision on January 10, 1997. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

BE&K Construction Company ("BE&K") commenced this action against the United Brotherhood of Carpenters and Joiners of America, AFL-CIO ("UBC"), and others, in the Alabama state court in Jefferson County, Alabama, alleging assault, trespass and civil conspiracy.

The gravamen of BE&K's complaint, as stated by the Supreme Court of Alabama, is that the UBC and several other defendants engaged in a "campaign . . . to prevent BE&K"—which is a "nonunion contractor"—from "performing labor contracts in two paper and pulp mills, located in Minnesota and Oregon, respectively." Pet. App. 1a-2a. In its complaint, BE&K "sought compensation for damage resulting from acts of vandalism and violence it alleged union employees had committed over the course of . . . this campaign" in Minnesota and Oregon. Pet. App. 2a.

The UBC is an international labor organization that is headquartered in Washington, D.C., and that maintains eight "district offices" in the United States. The UBC maintains no district or other office in Alabama, owns no property in Alabama, and has no bank accounts or investments in Alabama. Accordingly, BE&K served process on the UBC in the instant case by mail at the UBC's Washington, D.C. headquarters.

There are local unions, district councils and state councils (collectively "locals") affiliated with the UBC throughout the United States. Each local is a legally separate entity which adopts its own constitution, elects its own officers, maintains its own treasury, and conducts its own affairs. Individual workers become members of the UBC by joining a local in the area where the individual is employed; members thereafter pay dues to their local to maintain their good standing. The local, in turn, pays a monthly "per capita tax" to the UBC based on the number of members in good standing in the local.

When BE&K's lawsuit was filed, 10 of the 1,265 locals affiliated with the UBC were located in Alabama. Those locals accounted for 2,485 of the 495,000 members of the UBC, and for $198,022 of the $39,500,000 in per capita payments to the UBC. In percentage terms, then, less than one percent of those locals were based in Alabama, and only one half of one percent (.5%) of the members and of the UBC's income were attributable to Alabama.

At the time this suit began, the UBC had 355 employees nationwide including 77 regional staff representatives. One UBC staff representative resided in Alabama and performed normal union staff representative functions throughout the Southern region of the country.

In accordance with Alabama procedure, the UBC appeared and moved to dismiss the complaint on the ground that the exercise of personal jurisdiction over the UBC in Alabama with respect to claims resting on events that had transpired in Minnesota and Oregon would contravene the Due Process Clause of the Fourteenth Amendment. On the facts just outlined, the trial court denied the motion. Pet. App. 22a.

The Supreme Court of Alabama, on a petition for writ of mandamus, then rejected the UBC's federal constitutional claim and held, in agreement with the trial court, that the UBC was amenable to suit in the Alabama courts on *any* cause of action arising out of the UBC's activities

in *any* forum (or, in other words, that the Alabama courts could constitutionally exercise what has come to be known as "general jurisdiction" over the UBC). Pet. App. 1a-13a.

In so holding, the Alabama Supreme Court, while acknowledging that "the Due Process Clause of the 14th Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant," Pet. App. 8a, nonetheless concluded (i) that the above-enumerated UBC contacts with Alabama were "systematic and continuous enough to justify the imposition of a state's general jurisdiction over a foreign defendant," *id.* at 9a, and (ii) that BE&K's status as an Alabama resident corporation that had elected to file suit in the Alabama court was sufficient to satisfy the "considerations of fair play and substantial justice" implicated by the Due Process Clause, *id.*

Justice Butts of the Alabama Supreme Court dissented, stating:

> The Boise Cascade jobsite and areas surrounding International Falls, Minnesota, stand at the center of this lawsuit. That is the place where the vast majority of acts were alleged to have been committed, where critical witnesses to these acts reside, and where the community has spent years debating and absorbing the turbulence of this bitter labor dispute. In contrast, none of the acts complained of occurred in Alabama, the burden of bringing key witnesses to Alabama is an onerous one, and the Alabama citizenry has had little exposure to or impact from the acts at issue. . . . The structure of the Due Process Clause forbids a state court to exercise personal jurisdiction over a foreign defendant under circumstances that would offend "traditional notions of fair play and substantial justice." Because I believe such circumstances are present in this case, I would grant UBC's petition for the writ of mandamus and direct the trial court to enter an order dismissing BE&K's claims against UBC, without prejudice. [Pet. App. 21a.]

REASONS FOR GRANTING THE WRIT

The predicate for a judicial proceeding—and for a judicial system operating within the rule of law—is that the tribunal have the authority to adjudicate the claim brought by the plaintiff and to issue a valid judgment, *viz.*, that there be "jurisdiction." And, where the suit is brought against a legal entity—be it a corporation or an unincorporated association such as a labor union—and jurisdiction over the defendant is asserted *in personam*, the predicate for determining the constitutional limit on that assertion of jurisdiction is provided by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

International Shoe worked its revolution in this Due Process Clause inquiry just over a half century ago. But as the instant case shows, that revolution is only half fought.

International Shoe and its progeny are understood to have sanctioned, and delimited, *both* the assertion of *"specific jurisdiction"*—wherein a State may exercise personal jurisdiction over a defendant "in a suit *arising out of or related to* the defendant's contacts with the forum"—*and* the assertion of *"general jurisdiction"*—wherein a State may exercise personal jurisdiction over a defendant in any and all suits brought against that defendant, *including* "a suit *not* arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 nn.8 & 9 (1984) (emphasis added).[1]

The "specific jurisdiction" law has long since become settled. In contrast, the "general jurisdiction" law sug-

---

[1] Citing Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1136-44, 1144-64 (1966); Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S. Ct. Rev. 77, 80-81; *Calder v. Jones*, 465 U.S. 783, 786 (1984).

gested by *International Shoe*—and touched on in only two subsequent decisions, *Perkins v. Benguet Mining Co.*, 342 U.S. 437 (1952) and *Helicopteros, supra*—has proved so evanescent as to defy consistent application. The result is a multiplicity of irreconcilable general jurisdiction standards and general jurisdiction decisions in the state appellate courts and the federal courts of appeals.

That conflict goes to the essence: the competing Due Process Clause standards are normally outcome determinative on the question of the forum's jurisdiction to hear, and to decide on the merits, the plaintiff's claim against the defendant. And, the choice of the Due Process Clause standard that determines the scope of general jurisdiction has the most profound consequences for the litigation system and for litigants.

If the Alabama Supreme Court's decision here is correct, the Due Process Clause permits each and every State to exercise general jurisdiction—which to repeat is "jurisdiction over a defendant in a suit *not* arising out of or related to the defendant's contacts with the forum"—over each and every suit by a resident plaintiff against each and every unincorporated association (including, but not limited to, labor unions) that has legally-separate affiliated organizations, and/or dues-paying members, in the State and that maintains normal associational relations with those local entities and/or members. And, the Alabama Supreme Court reached that decision on the strength of its earlier decisions holding that in such cases the Due Process Clause permits the States to exercise general jurisdiction over each and every corporation that sells or distributes its products in the State, whether through employees, legally-separate franchises, or legally-separate authorized dealers or agents.

In short, the Alabama Supreme Court's approach would allow *each and every* State to assert general jurisdiction over the greatest portion of the legal entities that are active in this Nation's economic and social life.

That expansion of general jurisdiction, we submit, is *not* rooted in this Court's cases and does *not* accord with the *International Shoe* requirement that the assertion of jurisdiction over corporations and other legal entities be "reasonable in the context of our federal system of government," 326 U.S. at 317, and "reasonable and just, according to our traditional conception of fair play and substantial justice," *id.* at 320.

To correct the Alabama Supreme Court's overreaching of its authority—and to bring order to what is now legal chaos—this Court should issue a writ of *certiorari* in this case.

1. For over a century, since *Pennoyer v. Neff*, 85 U.S. 714 (1878), this Court has recognized that the Due Process Clause places constitutional limits on the power of a state or federal court to decide cases and render judgments *in personam*.

Under *Pennoyer*, the defendant's physical "presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him." *International Shoe*, 326 U.S. at 316. But that formulation of the governing Due Process Clause rule proved particularly problematic with regard to defendants, like corporations and unincorporated associations, that are legal entities, not natural persons. As the *International Shoe* Court explained, "[s]ince the corporate personality is a fiction, . . . it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it." *Id.* That being so, to ask whether the "corporation is so far 'present' . . . as to satisfy due process requirements . . . is to beg the question to be decided," *id.*, and to imply "consent to service . . . from presence" is to "resort to [a] legal fiction," *id.* at 318.

Instead, the *International Shoe* Court held that the question of "[w]hether due process is satisfied must depend . . . upon the quality and nature of the activity [of the cor-

poration] in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." 326 U.S. at 319. The Court elaborated on this concept as follows:

> [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, *so far as those obligations arise out of or are connected with the activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. [*Id.* (emphasis added).]

And, *International Shoe* goes on to hold that the State of Washington was constitutionally permitted to exercise jurisdiction over the corporate defendant in an unemployment compensation action arising out of the defendant's employment of salesmen in Washington. The Court explained:

> [T]he activities carried on in behalf of appellant in the State of Washington . . . were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state . . . . *The obligation which is here sued upon arose out of those very activities.* It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit *the state to enforce the obligations which appellant has incurred there.* [326 U.S. at 320 (emphasis added).] [2]

---

[2] Although *International Shoe* involved a corporation rather than, as in the instant case, an unincorporated association, the *International Shoe* analytical framework applies equally to both types of legal entities since, like the "corporate personality," the "personality" of an unincorporated association "is a fiction," and like cor-

International Shoe thus provides a solid doctrinal foundation for assessing the exercise of *specific jurisdiction* over a corporation or other legal entity. The Court has, moreover, decided a long line of such cases in the years since *International Shoe*.[8] The result is that this branch of the Due Process Clause law is clear as to the governing legal standard, its rationale, and the boundary points that mark its limits. And, as a consequence, the lower court specific jurisdiction decisions show admirable consistency both in reasoning and result.

Precisely the opposite is true with respect to the general jurisdiction doctrine. That doctrine can be traced back to a Delphic paragraph of *dictum* in *International Shoe* which reads as follows:

> While it has been held in cases on which appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, *Old Wayne Life Assn. v. McDonough*, [204 U.S. 8 (1907)]; *Green v. Chicago, B. & O. R. Co.*, [205 U.S. 530 (1907)]; *Simon v. Southern R. Co.*, [236 U.S. 115 (1915)]; *People's Tobacco Co. v. American Tobacco Co.*, [246 U.S. 79 (1918)]; *cf. Davis v. Farmers Co-operative Co.*, 262 U.S. 312, 317 [(1923)], there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. *See Missouri, K. & T.R. Co. v. Reynolds*, 255 U.S.

---

porations (and unlike individuals), an association's "presence . . . can be manifested only by activities carried on in its behalf by those who are authorized to act for it." 326 U.S. at 316. On this sole point, the lower courts are in unanimous agreement.

[8] *See, e.g., Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Calder v. Jones*, 465 U.S. 783 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

> 565 [(1921)]; *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915 [(1917)]; *cf. St. Louis S.W.R. Co. v. Alexander*, [227 U.S. 218 (1913)]. [326 U.S. at 318.]

The *International Shoe* Court did not, in terms, endorse the cited cases in which "continuous corporate operations within a state were thought so substantial and of such a nature" as to justify the exercise of general jurisdiction over the corporation. And, it is very much to the point that those cases—rather than essaying an articulated theory of the "continuous corporate activities" that are "so substantial" and "of such a nature" as to support a broad *general* jurisdiction—attempted to justify such jurisdiction by reference to the very "corporate presence" analysis that *International Shoe* rejects as an untrustworthy guide to constitutional decisionmaking.

To be sure, six years after *International Shoe*, in *Perkins v. Benguet Consolidated Mining Co., supra*, the Court did squarely uphold the exercise of general jurisdiction. But in so doing the Court dealt with the case before it on its particular facts and in narrow, fact-specific terms.

In *Perkins*, suit was brought in the Ohio courts against a Philippine mining corporation. World War II had "completely halted" Benguet's Philippine mining operations and the company largely conducted its business out of Ohio, which was the home state of its president who was also its general manager and its principal stockholder. 342 U.S. at 447-48. During that period of time, the president-general manager "maintained an [Ohio] office," *id.* at 447, from which he "discharged his duties as president and general manager," and did so by "carry[ing] on . . . a continuous and systematic supervision of the necessarily limited wartime activities of the company" and by "direct-[ing] . . . many of the company's wartime activities," *id.* at 448.

After outlining the background law as stated in *International Shoe*, the *Perkins* Court framed the question be-

fore it as "whether . . . the business done in Ohio by the respondent was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action . . . ar[ising] from activities entirely distinct from [respondent's] activities in Ohio." *Id.* at 447. Without offering any doctrinal elaboration, the Court "conclude[d] that, under the circumstances above recited, it would not violate federal due process for Ohio . . . to take . . . [general] jurisdiction of the corporation." *Id.*

This Court has issued only one general jurisdiction decision subsequent to *Perkins—Helicopteros Nacionales de Colombia, S.A. v. Hall, supra*—and that decision, like *Perkins*, is framed in fact-specific terms. There, suit was brought against a Colombian corporation which had operated a helicopter which had crashed in Peru, killing the plaintiffs' decedents. The Colombian corporation had purchased approximately 80% of its helicopter fleet (as well as spare parts and accessories) in Texas; the corporation's pilots were trained in Texas; and the corporation had negotiated a contract in Texas pursuant to which the corporation provided services, albeit outside of Texas, to a Texas-based joint venture. *See* 466 U.S. at 416-18. This Court, nonetheless, held that the Texas courts had erred by entertaining general jurisdiction over the corporation.

The *Helicopteros* Court posed the question to be answered as whether the defendant corporation's "contacts with the State of Texas . . . constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." 466 U.S. at 416. After canvassing the "contacts" one by one—and after finding that those contacts standing alone, and in their totality, "are not enough to warrant a State's assertion of *in personam* [general] jurisdiction over a nonresident corporation"—the Court held that the assertion of such jurisdiction on such contacts did not "satisfy the requirements of the Due Process Clause." *Id.* at 418-19.

2. The "general jurisdiction" doctrine thus rests on the most fragile of decisional bases. As Justice Scalia noted in his plurality opinion in *Burnham v. Superior Court*, 495 U.S. 604 (1990), this Court's "only holding" supporting the doctrine is *Perkins* which "involved 'regular service of summons upon [the corporation's] president while he was in [the forum State] acting in that capacity.' " 495 U.S. at 610 n.1 (quoting *Perkins*, 342 U.S. at 440) (brackets in original).

Equally to the point, neither *Perkins*—nor any prior or subsequent decision—offers any justification in principle for the proposition that the Due Process Clause sanctions the exercise of general jurisdiction over a legal entity on the strength of in-State activities of the entity that are *not* the predicate of the plaintiff's claim. This case presents the Court with an opportunity to fill that void. And, grasping that opportunity would meet the most pressing of needs.

Very simply stated, this Court's three general jurisdiction precedents have not proved sufficient to guide the determination of when general jurisdiction is constitutionally permissible. *International Shoe* says only that "there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify" general jurisdiction. *Perkins* speaks in terms of business "sufficiently substantial and of such a nature" as to permit general jurisdiction. And, *Helicopteros* frames the inquiry as whether the corporation's "contacts" with the forum State "constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*."

These "tests" or "standards," if such they be, have proved in practice to be too indistinct to bring shape and order to the general jurisdiction law. The result, as we now show, is an ever-expanding list of state, and federal, appellate court decisions that quote from the same words in *International Shoe*, *Perkins* and *Helicopteros*,

but cannot be reconciled in their understanding of those words, in their reasoning, or in their ultimate Due Process Clause holdings.

A number of state appellate courts—and one federal court of appeals—understand this Court's cases to permit the exercise of general jurisdiction over any corporation and any unincorporated association that engages in activities on an ongoing—as opposed to a sporadic—basis in the forum State, without regard to the nature, volume, or extent of the entity's activities in that State.

Other state courts and federal courts of appeals require more than continuity and hold that general jurisdiction is proper only if the defendant corporation or unincorporated association conducts *substantial* activities in the forum State. Several of these courts go on to hold that substantiality is to be determined by considering the proportion of the defendant's overall activities transacted in the forum.

The Fifth and Ninth Circuits take yet a third approach—that general jurisdiction is proper only where, as in *Perkins*, an entity centers its "general business" activities—*viz.*, the activities entailed in managing and directing its affairs—in the forum State.

Finally, the Second Circuit has stated an entirely different test, one focusing on five "reasonableness" factors drawn from this Court's specific jurisdiction jurisprudence.

The decisions just noted—and reviewed in greater detail below—bear only a slight resemblance to the ordinary process of constitutional elaboration. In the main, each forum State has gone more or less its own way with minimum explication of its rule and even less recognition of the decisions of other forum States. Nonetheless, from the holdings—if not the reasoning—of the cases, the conflict, and confusion, is plain.

(a) The Alabama Supreme Court, along with a number of other state appellate courts, has staked out the most expansive view of the constitutional limits on general jurisdiction.

The leading Alabama case, on which the court below relied in the instant case, is *Ex parte Newco Mfg. Co.*, 481 So. 2d 867 (Ala. 1985). *See* Pet. App. 11a. *Newco* was a product liability suit against a Kansas City-based company which sold an allegedly defective product in Maryland. The Alabama Supreme Court, while acknowledging that the case "does not relate to or arise from Newco's contacts with Alabama," nonetheless held that Newco could be sued in Alabama for any wrong the company had committed anywhere because, over a six-year period, the company had "annual sales . . . rang[ing] from $65,000 to $85,000" in Alabama, with a "total of 2,000 transactions" in the State over those six years. *Id.* at 868. In the Alabama Supreme Court's view, these sales—although small in dollar amount and effected without any Alabama-based employees through "an independent manufacturer's representative or the telephone and mail services"—nonetheless established that the defendant was "engage[d] in that continuous and systematic course of conduct in Alabama . . . that will support a reasonable exercise of jurisdiction by the courts of Alabama." *Id.* at 869.

Since *Newco*, the Alabama Supreme Court has repeatedly upheld the exercise of general jurisdiction over corporations which engage in ongoing business in the State regardless of the amount of that business or the importance of the business to the defendant's overall operations.[4] In-

---

[4] *See, e.g., Atlanta Auto Auction, Inc. v. G & G Sales, Inc.*, 512 So. 2d 1334 (Ala. 1987) (upholding general jurisdiction over a Georgia automobile auction services company that advertised its auctions in Alabama resulting, so far as the record showed, in "numerous" sales to a single Alabama customer); *Ex parte I.M.C., Inc.*, 485 So. 2d 724 (Ala. 1986) (the same result with respect to an Indiana corporation that, so far as the record showed, had made direct sales to a single customer in Alabama ranging from $2,339.48-$36,485.14 per year over a four-year period); *see also Ex parte British Steel Corp.*, 426 So. 2d 409 (Ala. 1982) (the fact that a British corporation sold steel in Alabama on a regular

deed, in the instant case, the Alabama Supreme Court understood *Newco* to stand for the proposition that where "nonresident defendants . . . initiate[] contact[] with the state solely for their own profit, availing themselves of the privileges of conducting business here . . . such activities [a]re sufficiently systematic and continuous to support a finding of general jurisdiction." Pet. App. 11a. And, on that basis, the Alabama Supreme Court sustained general jurisdiction here finding that the UBC's "collection of dues . . . is systematic and continuous." *Id.* at 12a.

The Alabama Supreme Court is not alone in this view. Decisions of the Alaska, Oklahoma, Washington, Michigan, Illinois and Mississippi courts—while far from a model of clarity—are to the same effect.[5] And, a line

---

basis through a wholly-owned subsidiary incorporated in New York and headquartered in Texas was sufficient, standing alone, to warrant the exercise of general jurisdiction over the British corporation).

[5] *See Glover v. Western Air Lines, Inc.*, 745 P.2d 1365, 1368 (Alaska 1987) (general jurisdiction held to be proper over Avis Rent-A-Car System, Inc.—a Delaware corporation with its principal place of business in New York—based on record evidence showing that "in 1985 Avis U.S. collected $10,985.12 from a single local franchisee"); *Ferrell v. Prairie Int'l Trucks, Inc.*, No. 86-949, 1997 WL 33953, at *3 n.2 (Okla. Jan. 28, 1997) (holding that a Delaware corporation with its principal place of business in Illinois had "sufficient contacts [with Oklahoma] for the exercise of either specific or general jurisdiction" by virtue of the fact that the corporation advertised its products and services in Oklahoma and, so far as the record showed, maintained contractual relations with two Oklahoma residents); *Hartley v. American Contract Bridge League*, 812 P.2d 109 (Wash. Ct. App.), *review denied*, 820 P.2d 511 (Wash. 1991) (holding, in reliance on the decision of the Washington Supreme Court in *Crose v. Volkswagenwerk Antiengesellschaft*, 558 P.2d 764 (Wash. 1977), that general jurisdiction was proper over a non-profit Contract Bridge League incorporated in New York and headquartered in Tennessee, on the ground that the Bridge League conducted an unspecified number of its bridge tournaments in Washington, serviced its members who resided in Washington, and collected an unspecified amount of dues and fees

of New York Court of Appeals' decisions beginning with *Tauza v. Susquehanna Coal Co., supra,* have a similar ring to them, although in the latest case in that line the corporation's sales in New York were not only ongoing in nature but substantial in absolute dollar terms.[6]

(b) The California, Nevada, Wyoming, and Texas courts have parted company with the courts cited above by insisting that general jurisdiction cannot be established

---

from those Washington members); *Michigan Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 465 (6th Cir. 1989) (surveying the Michigan state court cases on the issue of general jurisdiction, including one case in which general jurisdiction was upheld based entirely on evidence that the defendant corporation "had dozens of sales in Michigan throughout the year, which altogether totalled over $30,000"); *Maunder v. DeHavilland Aircraft*, 466 N.E.2d 217, 222 (Ill. 1984) (reaffirming, post-*Helicopteros*, its decision in *Braband v. Beech Aircraft Corp.*, 382 N.E.2d 252 (Ill. 1978), *cert. denied*, 442 U.S. 928 (1979), that general jurisdiction was proper over a Kansas airline manufacturer based entirely on the fact that, by virtue of an agreement with an independent distributor to market the manufacturer's products within Illinois, the manufacturer "could reasonably assume that airplanes which it manufactured would be owned by residents of Illinois"); *Administrators of Tulane Educ. Fund v. Cooley*, 462 So. 2d 696, 699-700, 705 (Miss. 1984) *cert. denied*, 474 U.S. 820 (1985) (outlining in nonquantitative terms Tulane University's activities in Mississippi—including, "most important[ly]," the fact that Tulane "regularly solicits and receives financial contributions" from "substantial numbers of alumni and friends in this state"—and concluding that general jurisdiction was appropriate based on "the extent of [those] activities [in Mississippi] without regard to what or how much more [Tulane] may do in Louisiana or elsewhere").

[6] *See Laufer v. Ostrow*, 434 N.E.2d 692, 695-96 (N.Y. 1982) (upholding the assertion of general jurisdiction over a New Jersey company whose sales representatives solicited New York customers on a "continuing rather than casual" basis, thereby generating a sales volume of $2,000,000 a year that, in the court's view, made it "evident that there is no unfairness in" subjecting the corporation to suit in New York on any cause of action).

by mere continuous business activity in a State if that activity is not substantial in nature.

Thus, for example, in *Cornelison v. Chaney*, 545 P.2d 264 (Cal. 1976), the California Supreme Court held that the California activities of a Nebraska trucker were "not so substantial or wide-ranging as to justify general jurisdiction over him to adjudicate all matters regardless of their relevance to the cause of action alleged by plaintiff," although the trucker "ha[d] been engaged in a continuous course of conduct that ha[d] brought him into the state almost twice a month for seven years . . . under a California license," with an average cargo worth approximately $20,000 per trip. *Id.* at 267.[7]

Similarly, in a series of cases the Nevada Supreme Court has refused to assert general jurisdiction over various California corporations, including a membership-type department store which, *inter alia*, had over 1,000 Nevada members, *Price & Sons v. District Court*, 831 P.2d 600 (Nev. 1992), and a California ski resort which advertised in Nevada and joined the Reno Chamber of Commerce, *Munley v. District Court*, 761 P.2d 414 (Nev. 1988). The Nevada Supreme Court has thus emphasized that "the level of contact with the forum state necessary to establish general jurisdiction is high." *Budget Rent-A-Car v. District Court*, 835 P.2d 17, 19 (Nev. 1992).[8]

---

[7] In its recent decision in *Vons Co. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1092 (Cal. 1996), the California Supreme Court reaffirmed the approach taken to the issue of general jurisdiction in *Cornelison*, although "[n]o question of general jurisdiction" was raised on appeal therein.

[8] *See also e.g. Markby v. St. Anthony Hosp. Sys.*, 647 P.2d 1068 (Wyo. 1982) (general jurisdiction over Colorado hospital denied notwithstanding that, *inter alia*, the hospital collected $35,000 in fees from 58 Wyoming patients in the nine-month period preceding the suit, and operated an air ambulance service in Wyoming); *National Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769 (Tex. 1995) (general jurisdiction over non-profit trade association based in

(c) The decisions of the District of Columbia, Pennsylvania, and Maryland courts go one step further in defining the constitutional threshold for general jurisdiction. Those courts—while agreeing with California and its sister States that substantial (as well as ongoing) contacts are required to support general jurisdiction—hold that substantiality must be determined by looking to the proportion of the defendant's activities in the forum State as against its activities outside the forum State.

Thus, in *Hughes v. A.H. Robins Co.*, 490 A.2d 1140 (D.C. 1985), the District of Columbia Court of Appeals held that it would violate due process to assert general jurisdiction over a drug company (A.H. Robins) even though that company did over three million dollars of business in the District, where that sales activity amounted to only 0.7% of the company's total sales. That court reasoned that while "three million dollars is a lot of money, . . . when the cause of action is unrelated to any corporate activity in the forum, such revenues cannot be deemed 'substantial' within the meaning of *International Shoe*." *Id.* at 1150-51.

Similarly, in *Derman v. Wilair Servs.*, 590 A.2d 317, 323-24 (Pa. Super.), *review denied*, 600 A.2d 537 (Pa. 1991), the intermediate Pennsylvania appellate court surveyed the Pennsylvania general jurisdiction cases and concluded that under the reasoning of those cases a New York corporation that did only 1.5% of its business with Pennsylvania residents could not, consistent with due

---

Silver Spring, Maryland denied notwithstanding the fact that the association had a member company in Texas which it serviced and from which it collected an unspecified amount of dues). *Cf. Thomason v. Chemical Bank*, 661 A.2d 595, 605 (Conn. 1995) (holding that general jurisdiction was proper over a New York banking corporation because "[a]lthough the trustee bank has no offices in this case, it conducts a substantial credit card business here, regularly solicits general banking business here and holds title (as mortgagee) to a substantial amount of real property in Fairfield county").

process, be brought within the general jurisdiction of the Pennsylvania courts on account of that business.[9]

Lewron Television, Inc. v. International Alliance of Theatrical Stage Employees & Moving Machine Operators, 378 A.2d 728 (Md. Ct. Spec. App. 1977), is most particularly to the point here.[10] In that case, suit was brought in Maryland by a resident plaintiff against an international union that had no office, bank accounts, property or investments in Maryland, 378 A.2d at 731-32, and a "very small percentage of its membership, less than one-third of one percent," in the State, *id.* at 735—circumstances that mirror the UBC's lack of a general presence in Alabama. The suit arose out of actions taken by the international outside of Maryland. *Id.* at 731. *Lewron* holds that in these circumstances general jurisdiction over the international is precluded by the Due Process Clause notwithstanding the international's continuous and advantageous relations with its Maryland members through its association with affiliated, per-capita-dues-paying local unions in Maryland, *see id.* at 731-35—relations that mirror those of the UBC and its Alabama members and affiliated, per-capita-dues-paying local unions in Alabama.

(d) The divisions in the state appellate courts are reflected, as well, in the case law in the federal courts of appeals.

(i) The Third Circuit has followed an approach that approximates that of Alabama and its sister States by upholding general jurisdiction when a legal en-

---

[9] *Cf. Ultra Scientific, Inc. v. Yanusas*, No. 95-249, 1997 WL 21187, at *2 (R.I. Jan. 21, 1997) (a Connecticut company's sales in Rhode Island, amounting to less than 0.07% of its total sales in the year preceding the suit, were, standing alone, "not so substantial that anything [the corporation] did in Rhode Island should subject it to Rhode Island [general] jurisdiction").

[10] *See also Goodyear Tire & Rubber Co. v. Ruby*, 540 A.2d 482, 486-87 (Md. 1988) (contact with the forum State must be "fairly extensive" to support general jurisdiction).

tity engages in ongoing activity within the forum State, without regard to how "substantial" those activities are either in absolute terms or in proportion to the defendant's overall business. Thus, in *Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n,* 819 F.2d 434 (3d Cir. 1987), that court allowed the federal district court in Pennsylvania to exercise jurisdiction over a California Bank which engaged in electronic check-clearing transactions with a Pennsylvania financial institution "every business day," *id.* at 438, on behalf of Pennsylvania customers who accounted for less than 1% of the California Bank's total business, *id.* at 436. The Third Circuit held that these "every day" banking transactions were sufficient, standing alone, to support the Pennsylvania district court's exercise of general jurisdiction over the California Bank, *id.* at 438; and that court dismissed as "generally irrelevant" the fact that those banking transactions represented an insignificant percentage of the California Bank's total business, *id.*

(ii) The Fourth Circuit—like the District of Columbia cohort of States—has adopted the opposite view. In *Nichols v. G.D. Searle & Co.,* 991 F.2d 1195 (4th Cir. 1993), the defendant (G.D. Searle & Company) engaged in business within the forum State (Maryland) that was every bit as "every day"—and far more extensive in traditional corporate "presence" terms—than the activities of the California Bank in *Provident Nat'l Bank.* Specifically, Searle directly employed 17-21 "detail" and "consumer product" representatives in Maryland who actively promoted the companies' products in Maryland under the direction of two district managers who were likewise employed in Maryland. 991 F.2d at 1198. And, "[a]s a result of these representatives' efforts, Searle had $9,000,000 – $13,000,000 annual sales in Maryland between 1983 and 1987." *Id.*

Pointedly noting that the annual sales generated by Searle's promotional activities in Maryland accounted for

only "approximately two percent of its total sales," *id.*—and also noting that Searle made "less than one percent of its annual purchases" in Maryland, *id.*; *see also id.* at 1200—the Fourth Circuit held that the assertion of general jurisdiction over Searle would violate the Due Process Clause notwithstanding the fact that Searle's promotional activities in Maryland were unquestionably "continuous." In so holding, that court quoted the *International Shoe* dictum, 326 U.S. at 318, for the proposition that "[o]nly when the 'continuous corporate operation within a state [is] thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities' may a court assert general jurisdiction over a corporate defendant." 991 F.2d at 1199. The Fourth Circuit elaborated on that proposition as follows:

> As two leading jurisdictional commentators have noted, because specific jurisdiction has expanded tremendously, plaintiffs now may generally bring their claims in the forum in which they arose. Arthur T. von Mehren and Donald T. Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv.L.Rev. 1121, 1148-53 (1966). As a result, "obsolescing notions of general jurisdiction," *id.* at 1144, which functioned primarily to ensure that a forum was available for plaintiffs to bring their claims, have been rendered largely unnecessary. *Id.* at 1178-79. Thus, broad constructions of general jurisdiction should be generally disfavored. [991 F.2d at 1200 (case citations omitted).] [11]

---

[11] *Cf. Madara v. Hall*, 916 F.2d 1510, 1516-17 (11th Cir. 1990) (refusing to allow general jurisdiction over a musical performer who had given concerts in Florida and whose "musical recordings are widely distributed throughout Florida," *id.* at 1517; "[i]f Hall could be sued on an unrelated cause of action because of concerts and record sales, then he likely would be amenable to suit in all the states of the union on any cause of action[; we] reject without further discussion the possibility that Hall is generally present in Florida for jurisdictional purposes based on these contacts," *id.* at 1516 n.7.).

(iii) The Fifth and Ninth Circuits have taken the logic of the Fourth Circuit's *Nichols* opinion one step further—a step advocated in Professors von Mehren's and Trautman's seminal *Jurisdiction to Adjudicate* article, 79 Harv. L. Rev. at 1143-44, cited in the *Nichols* opinion. Those courts delimit general jurisdiction to the situations in which a corporation's or an unincorporated association's activities are centered in the forum State in the way that was true in *Perkins* and that creates a "general business presence."

Thus, for example, in *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375 (5th Cir. 1987), the Fifth Circuit refused to sanction general jurisdiction notwithstanding the fact that the corporate defendant had made $250 million in sales in the forum State over a five-year period through seventeen different independent distributors; those activities, in that court's view, did "not sum to the general business presence found to exist in *Perkins*." Similarly, in *Dalton v. R & W Marine, Inc.*, 897 F.2d 1359, 1362 & n.2 (5th Cir. 1990), general jurisdiction was denied notwithstanding the fact that the corporate defendant derived 12.9% of its revenues from chartering boats to subsidiaries headquartered in the forum State, on the ground that under *Perkins* and *Bearry v. Beech Aircraft*, "contacts of a more extensive quality and nature are required" to "constitute a general presence in the state" sufficient to support the exercise of general jurisdiction. *See also Wilson v. Belin*, 20 F.3d 644 (5th Cir.), *cert. denied*, 115 S. Ct. 322 (1994).

And, in *Amoco Egypt Oil Co. v. Leonis Nav. Co.*, 1 F.3d 848 (9th Cir. 1993), the Ninth Circuit summarized its jurisprudence in this area as follows:

> The Supreme Court has upheld general jurisdiction only once, in a case involving contacts significantly more comprehensive than those presented here. *Perkins*, [*supra*]. We have stated that "the *Perkins* holding that the cause of action need not arise out of the defendant's activities in the forum is limited to its

> unusual facts," *Congoleum Corp. v. DLW Aktiengesellschaft*, 729 F.2d 1240, 1242 (9th Cir. 1984), and regularly have declined to find general jurisdiction even where the contacts were quite extensive. [1 F.3d at 851 n.3 (citations omitted).] [12]

(iv) The federal cases reviewed above—while in direct conflict with each other—all represent attempts to give content to *International Shoe*'s suggestion that there may be instances in which "continuous corporate operations within a state [are] so substantial and of such a nature as to justify" general jurisdiction, 326 U.S. at 318, and to *Helicopteros*' inquiry into whether the corporation or other legal entity has had "the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*," 466 U.S. at 416. The Second Circuit, however, has recently added to the confusion in the area by propounding a very different inquiry for determining the constitutionality of the exercise of general jurisdiction.

In *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560 (2d Cir.), *cert. denied*, 117 S. Ct. 508 (1996), the Second Circuit proposed that Due Process Clause general jurisdiction analysis proceed in two stages. At the first stage, the burden is on the plaintiff to show that the defendant has contacts with the forum State that are sufficiently continuous and substantial in absolute terms to warrant the conclusion that the defendant has " 'minimum contacts' " with that State. *Id.* at 567, 570-73

---

[12] The Tenth Circuit has recently staked out yet another position in this debate—one that places that court between the Third Circuit and the other courts of appeals discussed in text. In *Kuenzle v. HTM Sport-Und Freizeitgerate*, 102 F.3d 453, 457 (10th Cir. 1996), the Tenth Circuit formulated a four-factor test for general jurisdiction which looks at both the continuity of the business contacts and the "volume of business conducted in the forum state." Applying that test, *Kuenzle* denies general jurisdiction over an Austrian corporation which did substantial business in the forum State through an independent distributor.

(quoting *International Shoe*, 326 U.S. at 316).[13] If the court so concludes, it then proceeds to the second stage, where the court assesses the overall fairness of the assertion of general jurisdiction based on five "reasonableness" factors that this Court has previously identified and applied in its specific jurisdiction cases.[14] Here, however, the bur-

---

[13] The *Metropolitan Life* majority notes that the "minimum contacts test" is "more stringent" in the general jurisdiction context than in the specific jurisdiction context. 84 F.3d at 568. But its opinion offers little insight into how continuous and substantial the legal entity's business contacts with the forum State must be to satisfy the minimum contacts test in the general jurisdiction context, except to make clear that those contacts need not on the one hand be as great as those of the corporation in *Perkins*, and must on the other hand be more than *de minimis*. Thus, as the majority explained in resolving what it characterized as the "close" question of the existence *vel non* of the requisite minimum contacts in *Metropolitan Life*:

> [W]hile it is clear that Robertson's contacts do not rise to the level of those described in *Perkins*, we cannot agree with the district court's assessment of Robertson's Vermont contacts as "*de minimis*." While it is true that Robertson "owned no property in Vermont, and exercised no control over its independent dealers," the contacts it did have with the state were more than sporadic and occasional. While Robertson's $4 million dollars in sales in Vermont between 1987 and 1993, standing alone, may not have been sufficient, its relationship with dealers selling its products and its so-called "authorized" builders, the visits to those dealers and builders by Robertson personnel, the advertising and support available to Vermont residents regarding Robertson's products, and the deliberate targeting of Vermont architectural firms as sales prospects, tips the balance in Met Life's favor and leads us to conclude that it satisfied the "minimum contacts" requirement of the due process test. [84 F.3d at 572-73.]

[14] In *Metropolitan Life*, the Second Circuit summarized those factors as follows:

> (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the

den is on the defendant to make a " 'compelling case' " that the exercise of jurisdiction would be " 'unreasonable,' " *id.* at 568 (quoting *Burger King*, 471 U.S. at 477)—a case that the *Metropolitan Life* majority held was made out on the "exceptional" facts there presented. *Id.* at 575.[15]

3. (a) There is no need to belabor the deleterious effect on litigants—and on the litigation system—of the conflict and confusion in the general jurisdiction Due Process Clause law as it stands. It suffices, we believe, to note that this threshold jurisdictional issue goes both to the legitimacy of the exercise of judicial authority—and hence to the legitimacy of the entire subsequent judicial proceeding—and to "our traditional concepts of fair play and substantial justice" as those concepts are embodied in the Constitution's Due Process Clause, *International Shoe*, 326 U.S. at 320. Such an issue, by its nature, most urgently calls for clarity and uniformity in the governing law.

(b) While that is so—and while we believe that it is dispositive at the *certiorari* stage—we would be derelict if we did not foreshadow our view, and our submission, as to the right Due Process Clause general jurisdiction rule.

In our view, the Fifth and Ninth Circuits are correct in holding that the Due Process Clause permits the assertion of general jurisdiction over a corporation, or other legal entity, only if that entity has centered its "general business"

---

controversy; and (5) the shared interest of the states in furthering substantive social policies. [84 F.3d at 568, 573-75 (citing *Asahi Metal* and *Burger King*).]

[15] *Cf. Donatelli v. National Hockey League*, 893 F.2d 459 (1st Cir. 1990) (engaging in a similar two-stage analysis and concluding that general jurisdiction over the National Hockey League did not lie in Rhode Island notwithstanding the continuous and substantial business conducted in that State by a National Hockey League member, the Boston Bruins).

activities—*viz.*, its activities in managing and directing its overall affairs— in the forum State. That approach accords with *Perkins'* holding and is responsive to *Helicopteros'* formulation of the inquiry in a general jurisdiction case—whether the defendant has "the kind of continuous and systematic *general business contacts* [that existed] in *Perkins*," 466 U.S. at 416 (emphasis added). And, most importantly, that approach captures *International Shoe's* first principles.

International Shoe limits the assertion of jurisdiction over a legal entity to those instances in which such an exercise of judicial authority is "reasonable and just, according to our traditional notions of fair play and substantial justice." 326 U.S. at 320. And, *International Shoe* teaches that, in treating with a legal entity whose "presence" can be "manifested only by activities carried on in its behalf by those who are authorized to act for it," *id.* at 316, the calculus of "fair play and substantial justice" turns on "the quality and nature of the activity [in the forum State] in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure," *id.* at 319.

That calculus incorporates concepts of reciprocity between privileges and obligations and of proportionality in the relation between the two. The first premise is that "to the extent a corporation exercises the privilege of conducting activities within a state it enjoys the benefit and protections of the law of that state." 326 U.S. at 319. The second is that "the exercise of that privilege may give rise to obligations." *Id.* And, it follows from those premises, as the *International Shoe* Court said, that "so far as obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce [those obligations] can, in most instances, hardly be said to be undue." *Id.*

The converse is equally true. There is no virtue in expanding the concept of general jurisdiction so as to allow for suits, like the instant one, on claims arising—and based on activities occurring—outside the forum State merely because the legal entity carries on other delimited and lawful activities within the forum State. Neither reciprocity nor proportionality justify state jurisdiction over a legal entity in order to hold the entity to account for actions taken *elsewhere* in breach of some legal obligation imposed by some other State.

In such cases the in-State activities that were carried out under the "benefits and protections of the law of the forum state" did *not* generate any breach of the legal entity's concomitant obligations and the entity's activities that did allegedly breach a legal obligation were *not* carried out under the "benefits and protection of the law of the forum state."

Thus, we submit, it is only where, as in *Perkins*, the legal entity's activity in the forum State consists of "general business activity"—of managing and directing the enterprise as a whole—that it can be said to be "reasonable and just" to hold that entity to account in the forum State for all of its activities regardless of where those activities took place.

Keeping general jurisdiction within its conceptual bounds, we hasten to add, is entirely consistent with *International Shoe's* larger objective of making legal entities amenable to suit in the jurisdiction in which the entity has allegedly failed its legal obligations. As Professors von Mehren and Trautman predicted, *International Shoe*'s *specific jurisdiction* doctrine has proved protean and, as a result, "plaintiffs now may generally bring their claims in the forum in which they arose." *Nichols*, 991 F.2d at 1200. As the law now stands, a defendant accused of having acted within a State so as to cause injury to the plaintiff will, in the run of cases, have engaged in

activities within the forum State which are both sufficient in their nature, and sufficiently related to the plaintiff's claim, to support the assertion of specific jurisdiction.

(c) There is one final, and related, due process consideration that militates against the Alabama Supreme Court's expansive concept of general jurisdiction.

Corporations and unincorporated associations are, of course, expected to conform their conduct to the requirements of the law. To do so the entity obviously must know what the law is; fair notice is basic to any concept of due process.

Knowing the law is difficult enough for an entity operating on a national scale in a system in which there are fifty sovereign law-makers on the state level. But the difficulties become far, far greater—and the potential for unfairness becomes far, far greater—if actions taken in a particular State can give rise to legal proceedings not only in that State (under the law as authoritatively interpreted by the courts of that State), but in each and every State in which the entity has ongoing activities.

The instant case illustrates the point. As Justice Butts aptly stated in his dissenting opinion below, this case arises from a "bitter labor dispute" centered in International Falls, Minnesota where, it is alleged, the UBC sought to prevent BE&K from performing a construction contract in Minnesota and doing so nonunion. The lawfulness of what the UBC allegedly did in Minnesota ought to be determined by the Minnesota courts, applying Minnesota law, and if need be by a jury drawn from "the community [that] spent years debating and absorbing the turbulence of this bitter labor dispute." Pet. App. 21a (dissenting opinion).

The fact that the UBC happens to have some affiliated locals and some members in Alabama—and that BE&K, itself a corporation that conducts a nationwide business, happens to be headquartered in Alabama—does not make

it either "reasonable" or "just"—or consistent with "our traditional notions of fair play and substantial justice"—to call the UBC to account in Alabama, under Alabama's understanding and application of the law of Minnesota, for what is alleged to have transpired in Minnesota.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN T. DE CARLO
DANIEL J. HALL
DE CARLO, CONNOR & SELVO
500 South Virgil Avenue
Los Angeles, CA 90020

ANDREW D. ROTH
DAVID M. SILBERMAN
LAURENCE GOLD *
BREDHOFF & KAISER, P.L.L.C.
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036
(202) 833-9340

* Counsel of Record